

Power Supply Agreement
By and Between
The City of Chicago and Integrys Energy Services, Inc.

This Power Supply Agreement ("Agreement") is entered into as of this 13th day of December 2012 ("Effective Date"), by and between the City of Chicago ("City"), an Illinois municipal corporation, and Integrys Energy Services, Inc. ("Supplier"), a Wisconsin corporation with an office located at 20 N. Wacker Drive, Suite 2100, Chicago, IL 60606. Supplier and the City of Chicago are sometimes hereinafter referred to individually as a "Party" or collectively as the "Parties".

WITNESSETH

WHEREAS, Section 1-92 of the Illinois Power Agency Act, 20 ILCS 3855/1-92, authorizes the corporate authorities of a municipality to establish a program to aggregate electrical loads of residential and small commercial retail customers and to solicit bids and enter into service agreements to facilitate the sale and purchase of electricity and related services for those electrical loads ("Electricity Aggregation"); and

WHEREAS, pursuant to the Act, municipalities may, if authorized by referendum, operate an Electricity Aggregation Program as an "opt-out" program that applies to all residential and small commercial retail electrical customers who do not affirmatively choose to participate; and

WHEREAS, the corporate authorities of the City have approved the placement of a referendum on the ballot for the November 6, 2012 general election regarding the establishment of an "opt-out" Electricity Aggregation Program pursuant to the Act; and

WHEREAS, on November 6, 2012, Chicago voters approved the referendum giving the corporate authorities of the City the authority to operate an "opt-out" Electricity Aggregation Program pursuant to the Act; and

WHEREAS, the a Request for Pricing was issued on December 5, 2012; and

WHEREAS, Supplier is an ARES certified by the Illinois Commerce Commission and was determined to have submitted the lowest margin price submitted by responsible bidders pursuant to the Request for Pricing; and

WHEREAS, the City has selected Supplier as the supplier for the Electricity Aggregation Program; and

WHEREAS, the City and Supplier desire to establish the rights and obligations of the Parties with respect to aggregating, determining a Fixed Price, and providing Full Electricity Supply and related services for the Electricity Aggregation Program.

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1: RECITALS

The foregoing recitals are, by this reference, fully incorporated into and made part of this Agreement.

ARTICLE 2: DEFINITIONS

Whenever used in this Agreement, the following terms shall have the meanings defined below except where the context indicates otherwise:

- A. **Act** - The Illinois Power Agency Act, 20 ILCS 3855/1-1 et seq.
- B. **Affiliate** - Any person, firm, corporation (including, without limitation, service corporation and professional corporation), partnership (including, without limitation, general partnership, limited partnership and limited liability partnership), limited liability company, joint venture, business trust, association or other entity that now or in the future directly or indirectly controls, is controlled by, or is under common control with Supplier.
- C. **Ancillary Services** - The necessary services that shall be provided in the generation and delivery of electricity. As defined by the Federal Energy Regulatory Commission. Ancillary Services include, without limitation: coordination and scheduling services (load following, energy imbalance service, control of transmission congestion); automatic generation control (load frequency control and the economic dispatch of plants); contractual agreements (loss compensation service); and support of system integrity and security (reactive power, or spinning and operating reserves).
- D. **ARES** - has the same meaning as that set forth in section 16-102 of the Public Utilities Act. 220 ILCS 5/16-102.
- E. **Associate Member** - A commercial retail electric account that is not an Eligible Retail Customer that elects to enter into a supply agreement with the Supplier for the City's Electricity Aggregation Program. An example of an Associate Member is an account receiving service from ComEd under its small business tariff that consumes more than 15,000 kWh in a year.
- F. **ComEd** - Commonwealth Edison Company.
- G. **Default Tariff Service** - The applicable tariff services provided by ComEd as required by 220 ILCS 5/16-103 at the rates established in ComEd's "Price to Compare" for the applicable rate class, as posted on the ICC website, which includes ComEd's electricity supply charge plus its transmission services charge, but does not include ComEd's purchased electricity adjustment.
- H. **Delivery Point** - ComEd's point of interconnection.
- I. **Designee** - The person (or persons) empowered by the Chicago City Council through Ordinance to authorize and execute a contract price for electricity supply on behalf of the Electricity Aggregation Program.
- J. **Electricity Aggregation** - The pooling of residential and small commercial retail electrical loads located within the City for the purpose of soliciting bids and entering into an Agreement to facilitate for those loads the sale and purchase of electricity and related services, all in accordance with Section 1-92 of the Act.
- K. **Electricity Supply** - The electricity commodity plus necessary capacity, transmission, distribution, and ancillary services provided to Program Members and Associate Members.
- L. **Eligible Retail Customer** - The residential and small commercial retail customers of ComEd located within the City limits and eligible to participate in the Program as defined in section 1-92 of the Act (20 ILCS 3855/1-92).
- M. **Extended Term** - Defined in Section 3.A of this Agreement.

- N. Fixed Price** – A non-variable Full Commodity Price for a specified period. This price includes all costs associated with delivering electricity to the Delivery Point and ComEd's Utility Consolidated Billing and Purchase of Receivables services.
- O. Force Majeure Event** - Defined in Section 6.C of this Agreement.
- P. Full Commodity Price** – The all-inclusive unit price (\$/metered kWh volume) associated with delivering electricity to the Delivery Point. Such costs include, but are not limited to: energy (the cost of purchasing blocks of peak and off-peak energy, plus any shaping premium, plus any load following premiums), distribution losses (energy losses attributable to the distribution system), ancillary services (any additional charges from PJM that are not included in the transmission service charge), capacity (any charges associated with meeting the capacity requirements for delivering energy through PJM), transmission service charge (charges that recover the costs of using the transmission system, including the costs for services necessary for the reliable operation of the transmission system), PJM auction revenue rights (entitlement allocated annually to firm transmission service customers that entitle the holder to receive an allocation of revenues or charges from the annual firm transmission rights auction), PJM marginal losses (credits that are calculated as total net energy charges plus total net marginal loss charges), renewable portfolio standard (charges associated with fulfilling renewable energy obligations including alternative compliance payments to the ICC), and purchase of receivables/utility consolidated billing (charges associated with participating in these ComEd billing programs).
- Q. Full Electricity Requirements** - A sale of electricity supplies and services by the supplier in which the seller pledges to meet all of the each Member's and Associate Member's requirements, and the Members pledge to buy all of their electricity requirements from the Supplier, for the delivery period identified in the applicable Confirmation to this Agreement (which Confirmation shall be substantially similar to the Confirmation provided in Exhibit 1 hereto).
- R. Member** - An Eligible Retail Customer enrolled in the City's Program.
- S. Opt Out** - The process by which a Member who chooses not to participate in the Electricity Aggregation Program.
- T. Price to Compare** - The unit price for ComEd electricity supply services for each customer class which is the sum of the electricity supply charge and the transmission services charge as established by ComEd Rider PE (Purchased Electricity) and Rate BES (Basic Electricity Service) or their successor Rates and Riders.
- U. Program** - The program established by the City to provide residential and small commercial Members and Associate Members with retail electric supply as described in this Agreement.
- V. PIPP** - The Percentage of Income Payment Plan created by the Emergency Assistance Act, 305 ILCS 20-18, to provide a bill payment assistance program for low-income residential customers.
- W. PJM** - The PJM Interconnection, L.L.C., a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 11 states and the Province of Manitoba, including the ComEd Illinois service territory.
- X. Plan** - The Aggregation Plan of Operation and Governance adopted by the Chicago City Council pursuant to the requirements set forth in Section 1-92 of the Act.
- Y. REC** - Renewable Energy Credits.

- Z. **Regulatory Event** - Defined in Section 6.B of this Agreement.
- AA. **Services** – Defined in Article 5 of this Agreement.
- BB. **Small Commercial** – Non-residential retail customers with an annual consumption of less than 15,000 kWh per 220 ILCS 5/16-102.
- CC. **Term** – Defined in Section 3.A of this Agreement.

ARTICLE 3: TERM

- A. **Term of Agreement.** This Agreement commences on the Effective Date, provided however, the supply service to Members shall not commence until ComEd's confirmation of member enrollment with the Supplier and shall continue through the Members' May 2015 meter read, unless terminated earlier in accordance with the terms of this Agreement. If during the term of this Agreement, the Price to Compare for the non-space heating rate class falls below the Fixed Price, then the Supplier, at its option, may: (i) establish a rate equal to (a) the ComEd Price to Compare for the non-space heating rate class plus (b) any pass-through costs, such as administrative reimbursements to the City, program costs, enhanced environmental costs, and/or assigned or bilateral agreements to the program operations plan); or (ii) terminate this Agreement and return Members to the ComEd Default Tariff Service at no cost to the City or the Members. Additionally, any pass-through costs, such as administrative reimbursements to the City, program costs, and assigned or bilateral agreements the program operations plan shall be disregarded for purposes of comparing the Fixed Price and the Price to Compare.
- B. **End of Term.** This Agreement with the Supplier will terminate upon the expiration date of the term. In the event that a renewal with the Supplier, or a new power supply agreement with another ARES(s) has not been executed, the Supplier will, at the option of the City, either (i) return all Program Members and Associate Members to the ComEd Default Tariff Rate, or, (ii) extend the Agreement according to the terms in Article 3, Section C of this Agreement.
- C. **Extension.** The City and the Supplier may extend the Term of this Agreement for additional periods of time up to 24 billing cycles for each extension, by written mutual agreement approved and executed by each of them (each an Extended Term), which such extension may, among other things, provide for an opportunity to refresh the Fixed Price. Any modification to the Fixed Price in an Extended Term shall require Supplier issuance of a new Opt-Out notice for the Extended Term to all Members. Such Extended Term must be approved by the Chicago City Council. Nothing in this Article related to the Term or the possibility of agreement to an Extended Term may be construed or applied in any manner to create any expectation that any right or authority related to this Agreement granted by the City to the Supplier shall continue beyond the Term or an approved Extended Term. The City and Supplier may agree to allow the Supplier to continue to provide service to Members and Associate Members on a month-to-month basis after the expiration of the Agreement.
 - 1. If the City and the Supplier mutually agree to allow the Supplier to continue supplying Members and Associate Members on a month-to-month basis, the Supplier will provide such service at a rate based on fair market value of electricity that is below the Price to Compare.
 - 2. If the City and the Supplier mutually agree to allow the Supplier to continue supplying Members and Associate Members on a month-to-month basis, the Supplier will continue

under such an arrangement until the City provides it with 30 day written notice to discontinue providing service.

- D. **Notification.** In the event the City decides either (a) the Program will terminate upon expiration of this Agreement and (b) that it would like to select another ARES after such expiration, then the City must provide notice to Supplier at least 90 days prior to the first expiration date with any Member.

ARTICLE 4: PROGRAM RESPONSIBILITIES

A. **City Responsibilities.**

1. **Program Responsibilities.** The City shall perform applicable duties related to the Program as required by Section 1-92 of the Act -- i.e., adopting an ordinance authorizing aggregation, submitting a referendum to its residents, abiding by notice and conduct requirements of general election law, developing a plan of operation and governance, holding public hearings, and informing residents of Opt-Out rights.
2. **Customer Information.** Supplier and City shall cooperate to obtain the customer information from ComEd, subject to the limitations on disclosure of the customer information established at law, including, without limitation, the Act, Section 16-122 of the Public Utilities Act, 220 ILCS 5/16-102, and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2HH.
3. **Notices from ComEd.** The City shall promptly forward to Supplier any notices received by the City from ComEd concerning the accounts of Members.
4. **No City Obligations to Provide Services.** The Parties acknowledge and agree that the City is not responsible to provide, and this Agreement shall not be construed to create any responsibility for the City, to provide the Services to any person or entity, including without limitation the Supplier, ComEd, or any Member.
5. **No City Financial Responsibility.** The Parties acknowledge and agree that this Agreement does not impose or create, and shall not be construed to create, any financial obligation of the City to any other person or entity, including without limitation Supplier, ComEd, or any Member.

B. **Supplier Obligations.**

1. **Provision of Services.** The Supplier shall provide all of the Services described in Article 5 of this Agreement throughout the Term. The Supplier acknowledges and agrees that the City is not responsible to provide, and shall not be liable to the Supplier or any Member for any failure to provide, any Services pursuant to this Agreement.
2. **Compliance with Applicable Law.** Supplier shall comply with all requirements of law, including the Electricity Aggregation Ordinance enacted by the Chicago City Council on December 12, 2012, the City of Chicago's Plan of Operation and Governance, the Illinois Power Agency Act, the rules and regulations of the Illinois Commerce Commission ("ICC"), tariffs applicable to ComEd and PJM, and all other applicable federal, state, and local laws, orders, rules and regulations, including the terms and conditions in providing the Services pursuant to this Agreement.

3. **Compliance with Plan of Operation and Governance.** The Supplier shall provide all services required under this Agreement in accordance and compliance with the Plan of Operation and Governance approved by the Chicago City Council on December 12, 2012 and included in Exhibit 5 to this Agreement. If there is any discrepancy between (a) the Plan of Operation and Governance, and (b) this Agreement, the terms of this Agreement shall prevail.
4. **Timely Enrollment.** The Supplier shall provide the City with a detailed schedule and task description report identifying the measures to be taken to ensure timely enrollment of Member accounts within 2 days of the execution of this Agreement. The Supplier shall be obligated to paying reimbursements to the City for delays in enrollment that are due to the Suppliers' failure to meet agreed-to performance milestones identified in the schedule. Reimbursements will be calculated as the difference between the Fixed Price and the Price to Compare multiplied by the number of kWh billed during each monthly billing cycle that the Member remains on the ComEd Default beyond the targeted enrollment date.
5. **Electricity Supply and Services.** The Supplier shall supply the Full Electricity Requirements for the Program Members. In addition to securing and delivering electricity to the Delivery Point, the Supplier shall also meet the following requirements:
 - a. **Renewable Portfolio Standard.** The Supplier shall meet the requirements of the Illinois Renewable Portfolio Standard. The Supplier shall facilitate securing volumes of renewable energy resources that exceed the current renewable energy resource requirements of the RPS at the request of the City. The Supplier shall treat the costs of such excess renewable energy resources as pass-through expenses without additional markup beyond the terms allowed in the Agreement.
 - b. **Bilateral Contracts.** Supplier shall, upon mutual agreement of the Parties, facilitate including specific bilateral contracts with entities identified by the City for Electricity Supply and services. The Supplier shall treat such bilateral contracts as pass-through expenses without additional markup to the Members and Associate Members beyond the terms allowed in the Agreement.

ARTICLE 5: SUPPLIER SERVICES

The Supplier shall supply all of the following services in support of the Program (collectively, the "Services"):

A. Electricity Supply.

1. **Electricity Supply.**
 - a. **Transmission.** Supplier will acquire and pay all necessary transmission services up to the Delivery Point to deliver electricity supply to Members and Associate Members, including all electricity commodity costs, PJM charges, congestion charges, distribution and transmission losses, and capacity charges.
 - b. **Billing.** To the extent allowed by law and the ComEd tariff, Supplier shall make all arrangements for Members to receive a single monthly bill from ComEd during the Term. As part of such arrangement, it is expected that the following

fees will continue to be collected and processed by ComEd: monthly payments, late payments, delivery charges and monthly service fee.

- c. **Data.** Supplier shall maintain a comprehensive and confidential database recording historical account information for Member accounts that have been provided to Supplier by ComEd, and maintain a current list of Members, and accounts that have opted-out of the Aggregation Program.
- d. **Title.** Title to and risk of loss for the electricity sold to Members shall pass to the purchasing Member upon delivery at the Delivery Point;

2. Supply Mix.

Integrus has committed to provide supply from a supply portfolio that is sourced from generation that is not coal-fired electric generation and more fully described in Exhibit 7. However, there are two circumstances that could create a mismatch where the proposed electric supply "non-coal" nature of the supply portfolio may not meet the instantaneous load requirements. This could occur when:

- A. the generation in the supply portfolio incurs forced outages/de-rates and/or
- B. the load volume or load shape experiences variability compared to expected supply portfolio due to enrollment percentages, weather and migration.

The Parties agree that the redacted supply confirmation and certification in a form substantially similar to that included in Exhibit 7 hereto satisfies the requirements of Article VIII(A)(1) of the Plan of Operation and Governance.

3. Delivery Specifications

- a. **Quality and Measurement.** Supplier agrees that all electricity sold shall be delivered in accordance with applicable PJM and ComEd rules and tariffs and suitable for delivery to and use by the Members and Associate Members.
- b. **Title.** Supplier warrants that it possesses or will possess good marketable title to all electricity sold to the Members and Associate Members, and that such electricity is free from all liens and adverse claims up to the Delivery Point.
- c. **Delivery.** Supplier shall deliver all electricity supplied to Members and Associate Members at the Delivery Point to secure delivery to the Members and Associate Members.

B. Program Implementation.

- 1. **Member Service.** Supplier shall maintain certain minimum levels of customer service including:
 - a. **Program Management and Documentation.** Supplier program management and documentation shall be in accordance with 1) this Agreement and its addenda; 2) the City's Plan of Operation and Governance included in Exhibit 5; and 3) the Supplier's response to the City's Request for Qualifications as found in Exhibit 6.

- b. **Confidentiality.** Supplier shall maintain the confidentiality of customer information pursuant to the terms of this Agreement and as required by law.
 - c. **Customer Service.** Supplier shall assist Members and Associate Members with their inquiries. Concerns regarding service reliability should be directed to ComEd, billing questions should be directed to ComEd or the Supplier, as applicable, and any unresolved disputes should be directed to the ICC. Inquiries from Members and Associate Members should be managed within the following performance parameters:
 - i. **Telephone Inquiries.** Supplier shall maintain a toll-free telephone access line which shall be available to Members and Associate Members 24 hours a day, seven days a week. Trained company representatives shall be available to respond to customer telephone inquiries during normal business hours. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours shall be responded to by a trained company representative on the next business day. Under normal operating conditions, telephone answer times by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis.
 - ii. **Internet and Electronic Mail.** Supplier shall establish and maintain a website for the Members and Associate Members. The website shall provide basic information concerning the Electricity Aggregation Program and facilitate customer inquiries by providing a platform for the submission of questions by email or text. Responses to inquiries submitted through the website platform shall be generated within 24 hours.
 - iii. **Multi-Lingual Services.** Supplier shall provide customer service for Members and Associate Members requiring non-English verbal and written assistance.
 - iv. **Hearing Impaired.** Supplier shall provide customer service for hearing impaired Members and Associate Members.
 - v. **Data Services.** Supplier shall provide Members and Associate Members with online access to their account's historical electricity consumption and costs; information concerning the opportunities and advantages for energy efficiency and distributed generation; and analytical tools to aid in establishing more efficient use of electricity.
2. **Enrollments.** Supplier shall perform the following Electricity Aggregation account enrollment tasks:
- a. **Opt-Out Period.** The Supplier shall conduct an initial Opt-Out Period, which shall be a fourteen-day period during which eligible residential and small commercial

retail customers may opt out of the Electricity Aggregation Program prior to enrollment.

- b. **Opt-Out Notifications.** Supplier shall manage the Opt-Out period notification process under the supervision of the City and the Consultant and in accordance with the Plan of Operation and Governance. A single database shall track account enrollment and billing data. After the initial Opt-Out period, Supplier and the City agree that Supplier shall perform two (2) quarterly Opt-Out period notification processes at the Fixed Rate before October 2013. Any Opt-Out period notifications thereafter shall be by mutual agreement of the Parties. However, if the Fixed Price changes during the Term of the Agreement (except as a result of a change pursuant to Article 6(F) or a change in tariff charges as described in the Confirmation), Supplier agrees to provide Members with notice before the change in the Fixed Price takes effect.
- c. **New Accounts.** Supplier must facilitate the addition of new customer accounts to the Program during the term of this Agreement. Members and Associate Members wishing to opt in to the Program may contact the Supplier to obtain enrollment information. The Supplier will provide new Eligible Retail Customers the same pricing available to initial enrollees. The Supplier shall clearly state the rate to be charged for new accounts prior to enrollment.
- d. **Re-Joining the Aggregation Group.** Supplier must assist Members who have opted out to rejoin at a later date. Eligible Retail Customers may opt in to the Program at a later date in the same manner as new accounts. These Members may contact the Supplier at any time to obtain enrollment information, and shall receive the same Fixed Price as all other Members.
- e. **Moving Within the City.** Supplier must continue service at the same rate and under the same terms and conditions for any Member who relocates within the City prior to the expiration of the term of this Agreement, providing that the Member notifies the Supplier of its desire to do so with 30-days notice. The Supplier shall be responsible for providing notice to Members about this option, and shall provide such customers with the same pricing as all other Members.
- f. **Credit/Deposit Requirements.** Collection and credit procedures are to be the responsibility of ComEd and the Member or Associate Member. Members and Associate Members will be required to comply with the payment terms of ComEd. The City is not responsible for late payment or non-payment of any Member or Associate Member account. Neither the City nor the Supplier shall have a separate credit or deposit policy concerning Member accounts.
- g. **Reliability of Power Supply.** The Parties acknowledge that the Program only affects pricing for the power supply up to the Delivery Point. ComEd will continue to deliver power through their transmission and distribution systems. Responsibility for maintaining system reliability continues to rest with ComEd. If Members or Associate Members have service reliability problems, they should contact ComEd for repairs. The ICC has established "Minimum Reliability Standards" for all utilities operating distribution systems in Illinois. Member or Associate Member outages, duration of outages, interruptions, etc., are monitored to ensure that reliability remains at satisfactory levels. In addition to

maintaining the “wires” system, ComEd is required to be the “Provider of Last Resort,” meaning that should the Supplier fail for any reason to deliver any or all of the electricity needed to serve the Members’ and Associate Members’ needs, ComEd will immediately provide any supplemental electricity to the Members and Associate Members as required. ComEd would then bill the Supplier for the power provided on their behalf, and the Members and Associate Members would incur no additional cost therefore.

- h. **Fees Imposition.** Neither the City nor the Supplier shall impose any conditions, terms, fees, or charges on any Member or served by the Program unless the particular term, condition, fee, or charge, or the possibility of a change in the same, is clearly disclosed to the Member or at the time the Members chose not to opt-out of the Program.
- i. **Enrollment and Disenrollment Charges.** Supplier shall not assess any early termination, enrollment, switching, or relocation fees on Members. The Supplier shall reimburse Members for any switching fee imposed by ComEd related to the enrollment of a Member into the Program within 30 days of receiving notice of such switching fee. The Supplier shall not be responsible to pay any switching fees imposed on Members who switch service from another alternative retail electric supplier.
- j. **Form Documents.** Examples of Opt-Out letters and communications are provided in Exhibit 2 to this Agreement.

C. **Energy Efficiency, Renewable Energy, Distributed Generation, and Demand Response Programs.** Supplier will work with the City to develop energy efficiency, renewable energy, distributed generation, and demand response assets. Energy efficiency, demand response and renewable energy assets shall be treated as alternative supply options and appear as supply sources in the final power sourcing arrangements negotiated between the City and the Supplier.

D. **Program Monitoring.** Supplier is responsible for the faithful performance of this Agreement and shall have internal monitoring procedures and processes to ensure compliance, as more fully described in this Section.

- 1. **Reporting.** Supplier shall assist the City in developing a performance scorecard with conditions, milestones, requirements, or timetables related to Supplier’s performance under the Program. The scorecard may additionally record matters related to price, service, quality and other factors deemed important.
- 2. **Cooperation.** Supplier shall cooperate with the City in monitoring and tracking Program activity. This may require Supplier to report progress, problems and proposed resolutions, performance records, allow random inspections of its facilities (on no less than 48 hours prior written notice), participate in scheduled meetings and provide management reports, all as reasonably requested by the City.

E. **Cooperation at the Conclusion of the Aggregation.** Supplier agrees that it shall cooperate with the City in its planning and implementation of an aggregation plan that may succeed the Program under this Agreement. In its cooperation, Supplier shall, at a minimum, in a manner consistent with the then-applicable ComEd tariff(s) for Government Aggregation Protocols and as required by law, provide the City the names and addresses and account information for Members in electronic format.

F. **Fixed Price.** Supplier agrees that it shall provide to the City daily market price quotes to establish the Full Commodity Price for the Agreement. The daily market price quotes will detail the line item costs of energy supply, capacity, transmission, ancillary services, and vendor margin available to the City that day. The daily market price quotes will be reviewed by the Consultant to establish that the individual pricing details are: (i) consistent with market prices and tariffs; and (ii) consistent with the Agreement's terms. If the daily market price quote is deemed acceptable by the Consultant, the Consultant will inform the City of the price and pricing components and recommend acceptance. If accepted, the City Designee will affirm acceptance of the commodity price verbally and in writing via executed Confirmation to the Supplier. The Parties acknowledge that they may establish a Fixed Rate for only a portion of the term of this Agreement at the outset of the Term defined herein. The Parties agree to establish a Fixed Rate for the remainder of the term no later than 45 days prior to the Members' earliest meter read on which the first Fixed Rate would expire via a Confirmation signed by both Parties. If the Parties fail to agree on a Fixed Rate for the remainder of the Term of this Agreement, the Agreement shall cease at the end of the Delivery Period noted in the executed Confirmation and the Members shall be returned to Default Tariff Service.

G. **Reimbursement of City Costs.** Within 90 days after the Effective Date of this Agreement, Supplier shall reimburse the City for the actual costs it has incurred or will incur for professional, legal, Consultant, and administrative costs incurred by the City in connection with the adoption and oversight of the Program and the negotiation and execution of this Agreement. The amount that the Supplier shall reimburse the City shall not exceed \$650,000. The Supplier may treat such reimbursement expenses as pass-through expenses that are included in the Fixed Price.

ARTICLE 6: REMEDIES AND EVENTS OF DEFAULT

A. **Events of Default Defined.** The following constitute events of default:

1. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Supplier to the City.
2. Supplier's failure to perform any of its obligations under this agreement including the following:
 - a. Failure to maintain a minimum level of customer service for Members or Associate members. Minimum level of customer service requirements is defined as maintaining a minimum two-star rating as compiled by the ICC. The ICC's ARES' customer complaint statistics can be found at <http://www.pluginillinois.org/complaints.aspx>.
 - b. Demonstrating an inability to perform the services identified in this Agreement satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors.
 - c. Failure to promptly re-perform, as required, within a reasonable time and at no cost to the City, services that are rejected as erroneous or unsatisfactory;
 - d. Discontinuance of the Services for reasons within the Supplier's reasonable control;

- e. Failure to comply with any other material term of this Agreement, including the provisions concerning insurance and nondiscrimination; and
 - f. Any other acts specifically stated in this Agreement as constituting an act of default.
 - 3. Any change in ownership or control of Supplier without the prior written notification of the City.
 - 4. Supplier's default under any other agreement it may presently have or may enter into with the City for the duration of this Agreement. Supplier acknowledges that in the event of a default under this Agreement the City may also declare a default under any such other agreements.
 - 5. Supplier's violation of City ordinance(s) unrelated to performance under the Agreement such that, in the opinion of the Chief Procurement Officer, it indicates a willful or reckless disregard for City laws and regulations.
- B. Remedies.** The occurrence of any event of default listed in section A of this Article 6 permits the City to declare the Supplier in default. In addition to every other right or remedy provided to the City under this Agreement, if the Supplier is declared in default or otherwise fails to comply with any of the provisions of this Agreement (for reason other than an order, rule, or regulations of a governmental agency or court having jurisdiction over the Supplier and this Agreement or due to a force majeure or act beyond reasonable control of Supplier), then the City may give notice to the Supplier specifying that event of default or failure.
- 1. **Cure Period.** The Supplier will have 15 calendar days after the date of that notice to take all necessary steps to comply fully with this Agreement, unless (a) this Agreement specifically provides for a shorter cure period or (b) an imminent threat to the public health, safety, or welfare arises that requires a shorter cure period, in which case the notice must specify the cure period, or (c) compliance cannot reasonably be achieved within 15 calendar days but the Supplier promptly commences a cure and diligently pursues the cure to completion.
 - 2. **Failure to Cure.** If the Supplier fails to comply within that 15-day period, or the shorter period if an imminent threat, or if the Supplier fails to promptly commence a cure and diligently pursue the cure to completion, then the City, subject to the limits of applicable federal or State of Illinois law, may take any one or more of the following actions:
 - a. Seek specific performance of any provision of this Agreement or seek other equitable relief, and institute a lawsuit against the Supplier for those purposes.
 - b. Institute a lawsuit against the Supplier for breach of this Agreement and seek remedies and damages as the court may award.
 - c. In the case of noncompliance with a material provision of this Agreement, declare this Agreement to be terminated.
- C. Circumstance Leading to Termination.** This Agreement may be terminated early in the following circumstances:
- 1. **Non-Compliance.** If the Supplier fails to comply with any material term or condition of this Agreement, provided the failure continues beyond the Cure Period and written Notice of such failure is provided to the Supplier.

Material terms and conditions include but are not limited to:

- a. A breach of the confidentiality provisions in Article 10 of this Agreement;
 - b. Supplier's disqualification as an ARES due to a lapse or revocation of any required license or certification required to perform the obligations set forth herein;
 - c. ComEd's termination of its relationship with the Supplier;
 - d. Any act or omission that constitutes a deception by affirmative statement or practice, or by omission, fraud, misrepresentation, or a bad faith practice, such as attempting to collect a charge other than the approved per kWh rates or other charges set forth in this Agreement or the terms and conditions with each Member or Associate Member.
 - e. Billing in excess of the approved rates and charges;
 - f. Billing or attempting to collect any charge other than the approved kWh rates and contractually approved charges; or
 - g. Failure to perform at a minimum level of customer service required by the City.
2. **Failure to Schedule and Deliver.** The failure of Supplier to schedule Electricity Supply to ComEd for the Members and/or Associate Members, except as permitted under force majeure events, may lead to termination. Minimum level of customer service requirements is defined as maintaining a minimum two-star rating as compiled by the the ICC. The ICC's ARES' customer complaint statistics can be found at <http://www.pluginillinois.org/complaints.aspx>.

- D. **Force Majeure Events.** The Supplier shall not be held in default under, or in noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Program), where such noncompliance or alleged defaults occurred or were caused by a "**Force Majeure Event**," defined as a riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulatory event or other event that is beyond the Supplier's control. In the event of the foregoing, the time periods for any obligations that Supplier must meet shall be extended for a period not to exceed the time lost be reason of the delay; provided that the Supplier must (i) use reasonable commercial efforts to mitigate or eliminate the cause of such delay or its effects and, (ii) if events in the nature of the force majeure event were foreseeable, have used commercially reasonable efforts prior to its occurrence to anticipate and avoid its occurrence or effect. Supplier must notify the City and Members and Associate Members in writing promptly of any failure or delay in, and the effect on, its performance. Notwithstanding the foregoing, Supplier shall be excused from its performance hereunder in the event of a strike, walkout, work stoppage or other labor dispute affecting its personnel, those of City or those of a third party.
- E. **Regulatory Event.** The following shall constitute a "Regulatory Event":
1. **Illegality.** It becomes unlawful for a Party to perform any obligation under this Agreement due to the adoption of, or change in the interpretation of any applicable law by any judicial or government authority with competent jurisdiction.
 2. **Adverse Government Action.** A regulatory, legislative or judicial body (a) requires a material change to the terms of this Agreement that materially or adversely affects a Party or (b) takes action that adversely and materially impacts a Party's ability to perform, or requires a delay in the performance of this Agreement that either Party determined to be unreasonable or (c) orders a change or modification that affect the Program such that either Party's obligations hereunder are materially changed (including the capacity market changes contemplated in FERC docket ER11-4081), and the charge is not deemed a Force Majeure Event.
 3. **New Taxes/Legislative or Regulatory Charges.** Any new charges, tax or increases in such tax, or an application of such tax to a new or different class of parties, which is enacted or levied on the Supplier, not recoverable by Supplier from Members or Associate Members pursuant to Section 6 F below and effective after the Execution Date, except federal and state income taxes, employee taxes or other taxes assessed against the business of the Supplier or the delivery of services under this Agreement.
 4. **Occurrence of Regulatory Event.** Upon the occurrence of a Regulatory Event, the adversely affected Party shall give notice to the other Party that such event has occurred. Within thirty (30) days, or such other period as the Parties may agree in writing, the Parties shall enter into good faith negotiations to amend or replace this Agreement so that the adversely affected Party is restored as nearly as possible to the economic position it would have been in but for the occurrence of the Regulatory Event. If the Parties are unable to agree upon an amendment to this Agreement, within the prescribed time after entering negotiations, the adversely affected Party shall have the right, upon ten (10) days prior written notice, to terminate this Agreement. Upon termination of this Agreement as a result of a Regulatory Event, the obligations of Supplier and each Member and Associate Member set forth in the terms and conditions shall survive termination.

- F. **Additional Charges, Taxes, or Levies.** In the event that the electric utility, PJM or other applicable regional transmission organization, any transmission provider, or any unit of government takes action or fails to take an action that results in the imposition of a generally applicable additional charge, tax, or levy upon the Supplier, and similarly situated suppliers, for the provision of Services, then Supplier will adjust the Price to reflect such additional charge, tax or levy by the following procedure: The Supplier shall provide written notice to the City and Members within 15 days after the occurrence of such action or inaction, of: (i) the nature of the action or inaction; (ii) the adjustment of the Fixed Price for the applicable Term and (iii) the date on which the price adjustment will become effective. Within 15 days after receipt of the notice, the City shall have the right to request a meeting with the Supplier to review the action or inaction, and the price adjustment, identified by the Supplier. The Supplier and the City shall meet within five (5) business days after delivery of such request to the Supplier, and shall cooperate in good faith to resolve any dispute regarding the price adjustment, provided that nothing herein shall prevent the price adjustment from becoming effective on Members' bills on the date the notice was issued. The Supplier shall continue to provide the Services during any such negotiations, unless prohibited by law or regulation. This Section shall not apply to any fine or penalty assessed against the Supplier as a result of any failure by the Supplier to comply with applicable laws and regulations.

ARTICLE 7: INDEMNIFICATION, INSURANCE, DISCLAIMER, AND LIMITATION OF LIABILITY

- A. **Indemnification.** The Supplier shall defend, indemnify and hold harmless the City, its officers, employees, agents, and attorneys, from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, directly resulting from the Supplier's provision of the Services to the City, except to the extent caused by the negligence of the City. This duty shall survive for all claims made or actions filed within one year following either the expiration or earlier termination of this Agreement. The City shall give the Supplier timely written notice of its obligation to indemnify and defend the City after the City's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Supplier and/or the City. Nothing herein shall be construed to limit the Supplier's duty to indemnify the City by reference to the limits of insurance coverage described in this Agreement.
- B. **Insurance.** Contemporaneous with the Supplier's execution of this Agreement, the Supplier shall provide certificates of insurance, all with coverages and limits as set forth in Exhibit 4 to this Agreement. For good cause shown, the City may request submission of copies of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as the City may impose in the exercise of its sole discretion. Such certificates and policies shall be in a form acceptable to the City and from companies with a general rating of A minus or better, and a financial size category of Class VIII or better, in Best's Insurance Guide. Such insurance policies shall provide that no change, modification in, or cancellation of, any insurance shall become effective until the expiration of 30 days after written notice thereof shall have been given by the insurance company to the City. The Supplier shall, at all times during the term of this Agreement, maintain and keep in force, at the Supplier's expense, the insurance coverages provided above.

- C. **Limitation of Liability.** EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS CONTRACT FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE OF ANY DEGREE), STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

ARTICLE 8: REPRESENTATIONS AND WARRANTIES

- A. **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party, as of the date of this Agreement, that:

1. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation, and if relevant under such laws, in good standing;
2. It has the corporate, governmental and/or other legal capacity, authority and power to execute, deliver and enter into this Agreement and any other related documents, and perform its obligations under this Agreement, and has taken all necessary actions and made all necessary determinations and findings to authorize such execution, delivery and performance;
3. The execution, delivery and performance of this Agreement does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
4. It has reviewed and understands this Agreement and has independently assessed the merits of this Agreement;
5. It shall comply with all federal, state, and local laws, regulations, licensing, and disclosure requirements; and
6. It shall maintain the confidentiality of Members' and Associate Members' account information, as required by Illinois law.

- B. **Additional Representations by the Supplier.** The Supplier hereby further represents to City, as of the date of this Agreement, that:

1. Supplier shall hold any and all subcontractors to the Confidentiality provision set forth below;
2. Supplier shall not compensate the Consultant with respect to the award of this Agreement or the performance of this Agreement;
3. Supplier shall obtain and maintain, for the duration of this Agreement, such proof of insurance as the City of Chicago deem necessary as detailed in Exhibit 4;
4. Supplier shall deliver or cause to be delivered all electricity supplied by Supplier to each Member to the appropriate node locations to effect delivery to the Delivery Point;
5. Supplier shall maintain all of the qualifications, certifications, approvals, and other authorizations required by law to provide the Services pursuant to this Agreement;

6. Supplier shall not utilize data provided to the Supplier for the purposes of managing the Program to market electricity supply offers to eligible retail customers located within the City; and
7. Supplier must maintain an investment-grade corporate debt rating as evidenced by one of the major investment rating agencies. Supplier may provide a letter of acknowledgement from its parent firm citing that the parent company supports the financial liabilities and obligations of the Supply.

ARTICLE 9: CONFIDENTIALITY

Supplier shall preserve the confidentiality of the Member and Associate Member account information it receives as a result of the performance of its obligations set forth herein.

- A. Supplier shall not disclose, use, sell or provide customer account information to any person, firm or entity for a purpose outside of the operation of the Program. This provision shall survive the termination of this Agreement.
- B. Notwithstanding the foregoing, Supplier may disclose confidential account information as required by law, and any such disclosure shall not be a violation of this Agreement. However, such disclosure shall not terminate the obligations of confidentiality.
- C. Supplier agrees to give the City prompt notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any confidential account information.
- D. To extent legally permissible and practicable, Supplier shall provide the City with sufficient advance notice as to give the City an opportunity, at the City's discretion and sole cost, to seek to quash the subpoena, obtain a protective order or similar relief.
- E. In response to an order, subpoena, or other legal process, Supplier shall furnish only that portion of the confidential account information that is required or necessary in the opinion of Supplier's legal counsel. In addition, Supplier shall use reasonable efforts to obtain reasonable assurances that any account information so disclosed will be treated as confidential.
- F. Notwithstanding the foregoing, nothing herein shall prevent the use by Supplier of such customer account information for the purpose of communicating with Members or Associate Members or former Members or Associate Members. In addition, nothing herein shall prevent Supplier from using information in the public domain prior to its disclosure under this Agreement.

ARTICLE 10: MISCELLANEOUS

- A. **Entire Agreement.** This Agreement, including all Exhibits, constitutes the entire Agreement and understanding between the Parties with respect to the Services, which are included herein. All prior written and verbal agreements and representations with respect to these Services are merged into and superseded by this Agreement.
- B. **Amendment.** All amendments or modifications to this Agreement shall be made in writing and signed by both Parties before they become effective.
- C. **Ownership of Data and Documents.** All data and information, regardless of its format, developed or obtained under this Agreement ("Data"), other than the Supplier's confidential

information, will be and remains the sole property of the City. The Supplier must promptly deliver all Data to the City at the City's request. The Supplier is responsible for the care and protection of the Data until that delivery. The Supplier may retain one copy of the Data for the Supplier's records subject to the Supplier's continued compliance with the provisions of this Agreement. Upon expiration of the Agreement, Supplier shall provide City with an electronic copy of data defined in Article 5(A)(1)(c) at no cost to the City.

- D. **Assignment.** This Agreement shall not be transferred or assigned by either Party without the express authorization of the other Party, which shall not be unreasonably withheld, provided, however, that upon advance written notice to the City, Supplier may assign this Agreement to an Affiliate without the express authorization of the City, provided that Supplier remains liable for Supplier's obligations hereunder.
- E. **Notices.** Any notices, requests or demands regarding the services provided under this Agreement and the Attachments shall be deemed to be properly given or made: (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at its address set forth in this Agreement; (ii) if sent by U.S. Postal Service mail certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address shown below, on the day of receipt; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express service, addressed to the intended recipient at its address set forth in this Agreement. The address of a Party to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other Party.

TO CITY:

TO SUPPLIER:

City of Chicago Department of Fleet and Facility Management Attn: Janel Forde Deputy Commissioner 1685 N. Throop Chicago, IL 60642	Integrus Energy Services, Inc. Attn: Ronnie E. Cardwell, Vice President 1716 Lawrence Drive DePere, WI 54115
With a copy to: City of Chicago Department of Law Ron Jolly Senior Counsel 30 N. LaSalle St. Suite 1400 Chicago, IL 60602	With a copy to: Integrus Energy Services, Inc. Attn: Contract Administration 1716 Lawrence Drive DePere, WI 54115

- F. **Waivers.** The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such requirements, provisions or rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, that the City may have under Federal or state law unless such waiver is expressly stated herein.
- G. **Applicable Law and Choice of Venue.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Illinois, without regard to principles of conflict of laws. Except as to any matter within the jurisdiction of the ICC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this

Agreement shall be brought in the Circuit Court of the State of Illinois, Chicago County, Illinois. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Northern District of Illinois.

- H. **Exhibits.** Exhibits 1 through 6 attached to this Agreement are, by this reference, incorporated into and made part of this Agreement.
- I. **Controlling Provisions.** In the event of any inconsistency between the text of this Agreement and the terms of the Exhibits hereto, with the exception of Exhibit 5, the City of Chicago's Plan of Operation and Governance, and Exhibit 6, the Supplier's response to the City's Request for Qualifications, the text of the Exhibits shall control.
- J. **Severability.** Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or the remainder of this Agreement.
- K. **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Agreement.
- L. **Validity of Agreement.** The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and each Party expressly warrants that it has the power and authority to enter into the provisions, terms, and conditions of this Agreement.
- M. **Authority to Sign Agreement.** Supplier warrants to the City that it is authorized to execute, deliver and perform this Agreement. The individual signing this Agreement on behalf of the Supplier warrants to the City that he or she is authorized to execute this Agreement in the name of the Supplier.
- N. **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the City and the Supplier and their respective successors, grantees, lessees, and assigns throughout the Term of this Agreement.
- O. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument.
- P. **Subcontractors.** Supplier agrees to employ only those subcontractors that it determines are reasonably necessary. Subcontractors shall be held to the same strict confidentiality standards applicable to the Supplier, and shall be required to otherwise comply with the requirements of this Agreement. The use of subcontractors whether approved or unapproved shall not relieve the Supplier from the duties, terms and conditions in this Agreement. For purposes of this Agreement, regional transmission organizations, independent system operators, local utilities, and renewable energy certificate counterparties are not considered subcontractors.
- Q. **MBE/WBE.** Supplier agrees to adhere to the MBE-WBE compliance plan submitted in its response to the City's Request for Qualifications (Exhibit 6).

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective on the date first written above. The Parties agree that this Agreement may be executed in separate counterparts and delivered by facsimile, or as an attachment to an electronic message (such as a pdf, tif or other mutually acceptable type of file attachment), each of which when so executed and delivered shall constitute the one and the same original document.

Supplier: Integrys Energy Services, Inc.

City of Chicago:

Signed: Daniel J. Vergara

Signed: David Reynolds

Name: Daniel J. Vergara

Name: David Reynolds

Title: President

Title: Commissioner, Fleet & Facility Management

Date: 12/13/2012

Date: 12/13/12

CONFIRMATION

This Confirmation dated December 13, 2012 once fully executed, is an agreement entered into pursuant to the terms of the Power Supply Agreement between **Integrus Energy Services, Inc.** ("Supplier") and the **City of Chicago** (the "City"), and forms a part thereof. A duly authorized representative of the City must affirm acceptance of the below Fixed Commodity Price quote by: a) verbally accepting the quote via telephone to Supplier at 920-680-7611, and b) by affirming acceptance of the quote in writing by transmitting a fully executed copy of this Transaction Confirmation to: recardwell@integrysenergy.com. Both verbal acceptance and written affirmation of acceptance of the terms of this Transaction Confirmation must be received by Supplier no later than 4 PM prevailing Central Time ("Daily Acceptance Deadline") on the Quote Date indicated below. Failure to do so shall cause the Fixed Total Price Quote for that Quote Day to lapse and to be of no binding effect.

Supplier and City of Chicago agree that the Members shall receive the Fixed Price set forth below for the Delivery Period set forth below for their Full Electricity Requirements:

Delivery Period: Members' February 2012 meter reads through Members' May 2014 meter read

Fixed Price: \$0.05424 per kWh

The Price does not include ComEd distribution charges or applicable taxes. Both Parties recognize that components of the Fixed Price include electric tariff charges that are authorized by the Illinois Commerce Commission, PJM, other state or governmental agencies having jurisdiction, and/or the Federal Energy Regulatory Commission. Any increase in these charges subsequent to the execution of this Confirmation may be directly passed through to Members by a corresponding increase in the Fixed Price.

City of Chicago:

By: 

Name: David Reynolds

Title: Commissioner, Fleet & Facility Management

Date: 12/13/12

Supplier: Integrus Energy Services, Inc.

By: 

Name: Daniel J. VERBANAC

Title: President

Date: 12/13/2012